

James Markwick Junior, Plaintiff. } *The Mayor and Commonalty and Citizens*
 } *of the City of London, Defendants.*

The Defendants C A S E.

Upon a Writ of Error brought by the Plaintiff to reverse a Judgment given in the Court of Queen's Bench, in affirmance of a Judgment given in the Court of Common Pleas.

20 July, 7 Car. 1.

THE Right of Electing the Sheriffs of the City of *London* and County of *Middlesex*, being legally vested in the Mayor and Commonalty and Citizens of the City of *London*, to the intent they might the better be enabled to execute so great a Trust, an Act of Common-Council was made, That if any Citizen of *London* being fitly qualified, should be duly elected and chosen to be one of the Sheriffs of the City of *London* and County of *Middlesex*, and should refuse to take upon him the said Office (unless he should be discharged by Oath as to the insufficiency of his Estate, not being worth 10000 *l.* at the time of his Election, as the Act directs) should forfeit the Sum of 400 *l.* to the Mayor and Commonalty, and Citizens, to be recover'd by Action of Debt in any of the Courts of Record within the City of *London*.

22 July 10. W. 1698.
Elected Sheriff.

Thomas Woods, Citizen and Tallowchandler of *London*, being so qualified, was duly chosen to be one of the Sheriffs of the said City and County, and did not discharge himself as the Act of Common-Council directs, but refused to take upon him the said Office, and thereby incurr'd the said Forfeiture.

Easter Term, 1702.
Action brought in the
Sheriffs Court against
Woods.

Whereupon an Action was brought in the Sheriffs Court, *London*, by the Mayor and Commonalty and Citizens of the City of *London*, against the said *Woods* for the 400 *l.* on the Act of Common-Council; which *Woods* removed by *Habeas corpus*, into the Court of *Exchequer*, and upon a Return made of the said Act of Common-Council, and after several Arguments thereon had, the Act of Common-Council (as it had been before in the *Queen's Bench* and *Common Pleas*) was adjudged good and valid in Law, and a *Procedendo* was granted, and Judgment was afterwards given against *Woods* in the Sheriffs Court.

Hilary Term follow-
ing, Judgment against
Woods.

Easter Term follow-
ing, 1703. Writ of Er-
ror in the Court of Hu-
stings.

Upon which Judgment, *Woods* brought a Writ of Error returnable in the Court of *Hustings* in *London* (which Court is by Custom held before the Lord Mayor and Sheriffs, or before six Aldermen without the Mayor) in which Court only a Writ of Error doth lie of a Judgment given in the Sheriffs Court; and according to Custom, *Woods*, and the Plaintiff *Markwick* as Security, became bound to the Mayor and Commonalty, and Citizens of the City of *London* in a Bond of 800 *l.* Conditioned, among other things, to prosecute the said Writ of Error with Effect; which he neglecting to do, the said Writ of Error was by Judgment of that Court *Non-pros'd*.

Trinity Term follow-
ing, Action brought a-
gainst Plaintiff in the
Common Pleas.

The Defendants brought an Action of Debt upon the said Bond in the Court of *Common Pleas* against the Plaintiff, whereupon the Plaintiff pleaded that *Woods* did prosecute the said Writ of Error with Effect; whereunto the Defendants replied, he did not prosecute the same with Effect, but that it was *Non-pros'd* by Judgment; To which the then Defendant put in an immaterial Answer, and after a Demurrer being joined, and several Arguments had thereon, Judgment was given for the now Defendants in the Court of *Common-Pleas*.

Hilary Term 1704.
Judgment against Plain-
tiff in the *Common Pleas*.

The same Term the
Plaintiff brought a Writ
of Error in the *Queen's*
Bench.

Whereupon the Plaintiff brought a Writ of Error returnable in the *Queen's Bench*; and the Error insisted on was, That the Writ of Error was void, and by consequence the Bond given to prosecute it was also void, for that the Judgment being given in the Sheriff Court for the Mayor and Commonalty and Citizens of *London*, that Judgment could not be examined in the Court of *Hustings*, where the Mayor, one of the Plaintiffs, was Judge; And after solemn Arguments on both sides, the Court of *Queen's Bench* affirmed the Judgment given in the said Court of *Common-Pleas*, for that the Mayor was not the sole Judge, and the Court of *Hustings* might be held in his Absence.

Hilary Term 1707.
Judgment affirmed in the
Queen's Bench.

*Which Judgment it's conceived was Just, and is
humbly hoped shall be affirmed, with Costs.*

Edward Northey
Duncan Dee.